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MAY 13 2010

Ref: 8EPR-N

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

RE: EPA Comments on Draft Environmental Impact Statement, OEP/DG2E/Gas 1, Kern River Gas Transmission Company, Apex Expansion Project, Docket No. CP10-14-000, CEQ #20100103

Dear Secretary Bose:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, *et seq.*, and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, the U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the March 2010 Draft Environmental Impact Statement (DEIS) for the Kern River Gas Transmission Company (Kern River) Apex Expansion Project. This DEIS was prepared by the Federal Energy Regulatory Commission (FERC) to assess potential environmental impacts associated with the construction and operation of the Apex Expansion Project in portions of Wyoming, Utah, and Nevada.

The proposed expansion would allow transport of an additional 266 million cubic feet per day of natural gas from existing receipt points in southwestern Wyoming to existing delivery connections in southern Nevada. The proposal is to construct and operate approximately 28 miles of 36-inch-diameter natural gas pipeline (termed the "Wasatch Loop"), with 20 of those miles (or about 71% of the proposed route) being collocated with existing rights-of-way. This expansion would extend southwest in Utah from Morgan County, through Davis County to Salt Lake County. One new 30,000 horsepower compressor station would be built in Beaver County, Utah. Modifications would be necessary at four existing compressor stations (installation of additional compression at Coyote Creek Compressor Station in Uinta County, Wyoming, Elberta Compressor Station in Utah County, Utah, and Dry Lake Compressor Station in Clark County, Nevada, and replacement of an existing compressor unit at Fillmore Compressor Station in Millard County, Utah). Other above ground facilities included in the proposal are six new mainline valves, three pig launchers and two pig receivers.

Construction and operation of the proposed project would disturb approximately 1,013

acres of land, including impacts to two areas afforded special protection – Mueller Park Roadless Area and the Hogsback Roadless Area within the Uinta-Wasatch-Cache National Forest. Approximately 59% of the land that would be affected by construction of the Wasatch Loop is considered private land, with the remaining impacted land distributed among Federal and State lands (Bureau of Land Management, U.S. Forest Service, and State of Utah). No tribal land would be crossed by the project. Collocation of the project with existing rights-of-way would help reduce impacts. Affected areas outside the permanent right-of-way, as well as aboveground facility sites, would be restored and allowed to revert to pre-construction conditions and uses. Lands within the permanent right-of-way would be restored; however, this land would be subject to routine maintenance.

The DEIS considers a number of alternatives to the proposed project, including no action or postponed action, energy alternatives (energy conservation and increased efficiency, renewable energy, nuclear energy, and fossil fuels), system alternatives, major route alternatives, route variations, and aboveground facility site alternatives. With the exception of the Mueller Park and North Salt Lake III route variations, the alternatives were not viable options for meeting project objectives and/or were not found to provide clear environmental advantage over the proposal. FERC recommends that the Mueller Park and North Salt Lake III route variations be incorporated into the proposed project route.

In a June 15, 2009 letter, EPA provided input during your scoping process for this project. Thank you for addressing many of our comments in the DEIS. As a result, our concerns with the March 2010 DEIS have been narrowed to these remaining issues: (1) information and analysis; (2) water resources; (3) vegetation; (4) wildlife and special status species; and (5) air quality. These concerns are the basis for the EPA rating discussed at the conclusion of this letter.

Information and Analysis

The March 2010 DEIS is missing numerous survey reports, necessary additional data, and final appendices. FERC makes recommendations that Kern River complete and provide additional information and analysis prior to the end of the DEIS comment period, including all biological and cultural resource surveys and consultations and updated alignment maps/sheets made necessary by incorporation of the recommended Mueller Park Route and North Salt Lake III Route variations into the proposed project route. In addition, FERC recommends completion of a visual assessment report for the USFS-managed lands prior to the end of the DEIS comment period. Additional surveys, analyses, and plans that are referenced in the DEIS but not yet completed, still under review, or still under consultation to determine need include:

- wildlife and special status species surveys and plans (addressing raptor and migratory birds, yellow-billed cuckoos, pygmy rabbits, prairie dogs, Ute ladies'-tresses, northern goshawks, sage-grouse habitat and leks, site-specific blasting plans for sagebrush habitat, and Bonneville cutthroat trout impacts from proposed waterbody crossings outside the standard construction work window);
- any related Endangered Species Act Section 7 consultations with the U.S. Fish and Wildlife Service (USFWS) and any required mitigation;

- additional land requirements for workspaces and contractor yards due to site-specific construction requirements;
- cultural resource surveys and any required mitigation (for two recommended route variations, various construction areas, and one access road);
- air quality analyses related to operational impacts; and
- surveys of all potable water supply wells and springs within 150 feet of the proposed construction right-of-way.

In addition, EPA notes that several final plans are referenced but not included in the DEIS, such as the "Paleontological Resource Management Plan," "Unanticipated Discoveries Plan," "Stormwater Pollution Prevention Plan," and "Resource Report No. 3, Vegetation and Wildlife." Three important appendices are still in draft form – Appendix H, Kern River Spill Prevention, Control, and Countermeasure (SPCC) Plan, Appendix K, Wetland Remedial Revegetation Plan, and Appendix M, All-Terrain Vehicle and Off-Highway Vehicle Barrier Plan.

EPA believes the missing information is necessary to fully assess potential environmental impacts of the project, and we are therefore concerned about incomplete disclosure of impacts in the March 2010 DEIS. While many of the missing items are expected to be completed prior to construction, we recommend that all identified information, data, plans, and analyses should be finalized and incorporated into the Final EIS.

Water Resources

Surface Water: The Apex Expansion Project would cross 21 waterbodies, including 12 perennial, seven intermittent, and two ephemeral streams (however one perennial waterbody would be crossed three times accounting for a total of 23 proposed waterbody crossings). Many of these waterbodies are considered sensitive, including one (Jordan River) with impaired water quality for dissolved oxygen and total dissolved solids levels, nine supporting species of special concern, and six designated by Utah as high quality waters. Of the 23 proposed crossings, three would use the conventional horizontal bore method, two would use the dam-and-pump method, and 18 would use the flume method. EPA recommends that crossings on perennial streams, particularly the "Sensitive Waterbodies" identified in Table 4.3.2-3, consider use of directional drilling to reduce impacts to water resources. Also, all proposed stream crossing activities should be coordinated with the U.S. Army Corps of Engineers (COE), similar to activities discussed in Section 4.3.3, Wetlands.

Since the majority of the Wasatch Loop will cross landforms exhibiting steep slopes, EPA recommends best management practices (BMPs) to prevent sedimentation of surface waters and restoration to prevent sedimentation flow into streams. The BMPs identified in Appendix E, Wetland and Waterbody Construction and Mitigation Procedures, should use redundancy to ensure effective erosion and sediment control, even during storm events. The BMPs should be inspected and maintained frequently and should be adjusted in response to inspection findings. Bioengineering methods or soft bank protection to stabilize stream banks are recommended over riprap to ensure full restoration.

In addition, we note Appendix G, Noxious Weed Control Plan, includes a section entitled "Spill in Waterbodies." The first sentence of this section should be removed since, depending on the herbicide, there may not be threshold limits for accidental spills into a waterbody.

Wetlands: The Apex Expansion Project would be located in arid and semi-arid environments, where wetlands account for a small proportion of the total land surface but still provide valuable functions, including flood flow attenuation, sediment retention, wildlife habitat, groundwater recharge/discharge, and erosion control. The proposed pipeline route would affect five wetlands for a total impact area of six acres. Kern River has re-routed the proposed pipeline in the area of a sensitive seep wetland to avoid impacts.

EPA notes Executive Order (EO) 11990 - Protection of Wetlands (May 24, 1977) states in pertinent part: "Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. (b) This Order does not apply to the issuance by Federal agencies of permits, licenses or allocations to private parties for activities involving wetlands on non-Federal property." FERC should consider and document how EO 11990 will be carried out with regard to this project.

The DEIS includes an assumption that a Clean Water Act (CWA) Section 404 nationwide permit (NWP) for natural gas pipelines that affect wetlands will apply to this project. It is possible that specific conditions (beyond those identified in the NWP) may be applied for crossings on a case-by-case basis to minimize impacts to aquatic ecosystems. Again, close coordination with the COE is necessary to determine applicability of a NWP or the need for an individual permit to address associated CWA 404 regulatory requirements.

EPA recommends that restoration and revegetation efforts in disturbed areas occur as soon as possible. While Appendix F, Reclamation Plan, echoes this sentiment, a specific timeframe should be provided for restoration and revegetation efforts to begin upon completion of cleanup. In addition, although Kern River would monitor wetland revegetation efforts for three years following construction and a remedial vegetation plan would be implemented with continued monitoring if success criteria are not met, EPA recommends a minimum monitoring and reporting period of five years. Finally, data should be provided on the restoration success from construction of the original Kern River pipeline for comparison of the timeframe necessary for full wetlands recovery.

We note Kern River would generally limit vegetation maintenance adjacent to waterbodies to provide a riparian strip at least 25 feet wide. In areas of sensitive habitat, EPA recommends a 50-100 foot riparian corridor to ensure revegetation of native species.

Hydrostatic Testing: Hydrostatic testing associated with the proposed project is estimated to require about 3.5 million gallons of water, mostly withdrawn from local surface waterbodies. Some of these potential water sources are considered sensitive waterbodies that contain aquatic species of special concern. Hydrostatic testing for the proposed project will occur from November 2010 through October 2011. This year-long testing will extend related environmental impacts. EPA recommends shortening this time period and providing a discussion regarding how adequate base flows in sensitive waterbodies will be maintained during testing. In addition, we note that Appendix E, Wetland and Waterbody Construction and Mitigation Procedures, contains general requirements for appropriate permitting, intake sources and rates, and discharge locations and rates. While the text of the DEIS states that test water will be discharged into the same watershed from which it was withdrawn, this requirement is not identified in Appendix E. We recommend that such a requirement be specified in the hydrostatic test procedures to eliminate concerns with transfer of non-indigenous species across watersheds.

Vegetation

The proposed project would temporarily impact about 402 acres of vegetation and permanently impact about 203 acres of vegetation. Some of these impacted acres would occur in the Mueller Park Roadless Area, resulting in degradation of the landscape character. The DEIS Section 4.4.5, Vegetation Impacts and Mitigation, notes that FERC would continue to monitor post-construction revegetation until vegetation is at least 80% of the type, density, and distribution of vegetation in adjacent undisturbed areas. Since it is also noted that, depending on vegetation type, it could take decades to recover, please describe how you will ensure that monitoring will continue as long as necessary. Appendix D, Upland Erosion Control, Revegetation, and Maintenance Plan, appears to be inconsistent with the DEIS text since it states follow-up inspections of disturbed areas will occur after the first and second growing seasons. Appendix F, Reclamation Plan, similarly contemplates a 2-3 year time period to re-establish vegetative cover. Please clarify if additional revegetation efforts would be required beyond the 2-3 year timeframe and who would be responsible for implementing and monitoring these efforts.

Wildlife and Special Status Species

On March 5, 2010, the USFWS determined that the greater sage-grouse warrants protection under the Endangered Species Act (ESA), and it became a candidate species. The greater sage-grouse would likely be affected by construction of Kern River's proposed project due to their relatively high numbers within the project area. FERC recommends several measures to minimize impacts, including:

- identification of Great Basin sagebrush habitat to be included in proposed lek surveys;
- avoidance of clearing and construction activities during times of breeding, nesting, and early season brood-rearing within a 4-mile radius of any active leks;
- site-specific blasting plan developed for sagebrush habitat in consultation with USFWS and the State of Utah; and
- planting of Great Basin sagebrush during restoration efforts.

Additional recommendations to consider include:

- no surface disturbing activities within identified crucial wintering habitat between December 1 and March 15;
- no permanent structures or facilities within identified crucial wintering habitat; and
- no noise levels exceeding 45dB within five kilometers of a lek.

The Utah prairie dog is an ESA-listed threatened species. A known population of Utah prairie dogs is within five miles of the proposed Milford Compressor Station site and suitable habitat also exists at the site itself. Kern River proposes to conduct prairie dog surveys in 2010, and avoidance/mitigation measures would be developed in consultation with the appropriate agencies, if necessary. An alternative location was analyzed and found to be environmentally acceptable if Kern River determines that the Milford Compressor Station should be relocated due to Utah prairie dog presence. EPA expects the FEIS to include these survey results and analysis.

Other ESA threatened, candidate, or petitioned species that have potential habitat in the project area include the Ute Ladies'-tresses (threatened), yellow-billed cuckoo (candidate), pygmy rabbit (petitioned), and northern leopard frog (petitioned). Surveys are planned for 2010. We understand that USFWS ESA Section 7 consultations are ongoing, and we would expect to see the results of surveys and consultations in the FEIS. We also recommend that Appendix G, Noxious Weed Control, be revised to include consideration of threatened and endangered species prior to application of herbicides.

In addition, the proposed project may impact raptors and other migratory birds. To minimize habitat fragmentation impacts, Kern River proposes collocating much of the right-of-way adjacent to existing pipelines, and clearing/grading would occur outside of breeding season. However, the DEIS notes that currently proposed mitigation measures are inconsistent with those recommended by the USFWS's Guidelines for Raptor Protection. We understand that raptor surveys are planned for 2010 to be followed by additional coordination with appropriate Federal and State agencies to develop any necessary mitigation measures. Again, we would expect to see the results of these surveys and the additional coordination/mitigation measures in the FEIS.

Air Quality

Table 4.11.1-3, Ambient Air Quality Standards, appears to contain some inconsistencies with the National Ambient Air Quality Standards (NAAQS). Specifically, the $PM_{2.5}$ 24-hour secondary standard is missing, the footnote regarding attainment of the $PM_{2.5}$ 24-hour standard does not exactly mirror the NAAQS description, and the lead rolling 3-month standard is missing. The table should be revised to address these inconsistencies.

Table 4.11.1-5 provides regional background air quality concentrations for criteria pollutants. We recommend providing background greenhouse gas (GHG) concentrations as well. Data for background GHG atmospheric concentrations are available in EPA's April 15, 2002, *EPA Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1900-2002*. In addition, the DEIS should discuss voluntary measures to reduce/offset GHG emissions of the proposed project.

Tables 4.11.1-7 and 4.11.1-8 provide estimated construction and operation emissions from the Apex Expansion Project. No air quality modeling analysis is included to assess impacts to air quality. Given that portions of the project are located in nonattainment and maintenance areas in Davis, Salt Lake, and Utah Counties, Utah, and Clark County, Nevada, we recommend use of a screening air quality model. The American Meteorological Society/EPA Regulatory Model Improvement Committee model (AERMOD) or SCREEN3 (a single source Gaussian plume screening model which provides, among other things, maximum ground-level concentrations for point, area, flare, and volume sources) would be useful to assess impacts to sensitive receptors from PM_{10}, $PM_{2.5}$, NO_2, CO, SO_2, and any hazardous air pollutant emissions associated with the proposed action (direct and/or cumulative).

In addition, any applicable Clean Air Act (CAA) State Implementation Plan (SIP) requirements for criteria pollutants and regional haze should be discussed. In general, however, indicating intentions to comply with air permitting and other CAA requirements (as is the case in DEIS sections regarding direct and cumulative air quality impacts) is not the same as disclosing air quality impacts as required by NEPA. These impacts should be assessed and disclosed.

EPA's Rating

Consistent with Section 309 of the Clean Air Act, it is EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project. Based on the procedures EPA uses to evaluate the adequacy of the information and the potential environmental impacts of the proposed action, EPA is rating this DEIS as Environmental Concerns – Insufficient Information (EC-2). The "EC" rating indicates that EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. The "2" rating indicates that EPA has identified additional information, data, analyses, or discussion that should be included in the Final Environmental Impact Statement. A full description of EPA's rating system is enclosed.

We appreciate the opportunity to provide comments on this Draft Environmental Impact Statement. If we may provide further explanation of our comments or the EC-2 rating, please contact me at 303-312-6004, or your staff may contact Amy Platt at 303-312-6449.

Sincerely,

Larry Svoboda
Director, NEPA Program
Ecosystems Protection and Remediation

Enclosure

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO - - Lack of Objections: The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC - - Environmental Concerns: The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO - - Environmental Objections: The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU - - Environmentally Unsatisfactory: The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 - - Insufficient Information: The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 - - Inadequate: EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.